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7 JOEVON L BOWEN,
8 Petitioner,
9 v.
10 DANNY SAMUELS,
11 Respondent.
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No. [23-cv-00291-JST](#)

**ORDER GRANTING REQUEST TO
REOPEN; VACATING ORDER OF
DISMISSAL AND JUDGMENT;
ORDERING RESPONDENT TO SHOW
CAUSE; DENYING REQUEST FOR
LEAVE TO PROCEED IN FORMA
PAUPERIS AS MOOT**

Re: ECF No. 12-14

14 Petitioner, an inmate at California's Men Colony, filed this *pro se* action seeking a writ of
15 habeas corpus pursuant to 28 U.S.C. § 2254, challenging the San Francisco Superior Court's 2020
16 denial of his Cal Penal Code § 1170.95 petition for re-sentencing. *See generally* ECF No. 1. For
17 the reasons set forth below, the Court GRANTS Petitioner's request to reopen the case, ECF No.
18 7; DENIES as moot Petitioner's request for leave to proceed *in forma pauperis*, ECF No. 6;
19 VACATES the Order of Dismissal and Judgment (ECF Nos. 4, 5); REOPENS this action; and
20 ORDERS Respondent to show cause why federal habeas relief should not be granted.

21 **I. Request to Reopen and Request for Ruling**

22 Petitioner commenced this action on or about January 20, 2023, when he filed a *pro se*
23 petition for a writ of habeas corpus. *See generally* ECF No. 1. On March 27, 2023, the Court
24 dismissed this action without prejudice because Petitioner had not filed an application to proceed
25 *in forma pauperis* or paid the filing fee. ECF Nos. 4, 5. In the Order of Dismissal, the Court
26 instructed Petitioner that any motion requesting leave to reopen this action must be accompanied
27 by either a complete *in forma pauperis* application or a filing fee. ECF No. 4.

28 On March 13, 2023, the Court received Petitioner's filing fee and docketed the payment on

1 April 3, 2023. ECF No. 8. On March 27, 2023, Petitioner filed a pleading titled, “Application to
2 Reinstate Habeas Corpus and Continue the Docket Order,” ECF No. 7, which the Court construes
3 as a request to reopen this action. As Petitioner has fulfilled this filing obligation, the Court
4 GRANTS the request to reopen this action. ECF No. 7. The Court ORDERS the Clerk to
5 VACATE the Order of Dismissal and related judgment, ECF Nos. 4, 5, and REOPEN this action.

6 **II. Screening Petition**

7 **A. Standard of Review**

8 This court may entertain a petition for writ of habeas corpus “in behalf of a person in
9 custody pursuant to the judgment of a state court only on the ground that he is in custody in
10 violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a); *Rose v.*
11 *Hodes*, 423 U.S. 19, 21 (1975). A district court shall “award the writ or issue an order directing
12 the respondent to show cause why the writ should not be granted, unless it appears from the
13 application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

14 **B. Petition**

15 In 2011, Petitioner was found guilty of first-degree murder by a San Francisco County
16 jury, and was sentenced to a term of 25 years to life in state prison. ECF No. 1 at 1, 16. On
17 February 8, 2019, Petitioner filed a motion for resentencing pursuant to Cal. Penal Code (s)
18 1170.95. After holding an evidentiary hearing, the state court denied the resentencing motion,
19 finding that the prosecution had proved that Petitioner was ineligible for resentencing because he
20 was a major participant in the felony underlying the felony murder and he acted with reckless
21 indifference to human life. ECF No. 1 at 17. The petition alleges that there is insufficient
22 evidence to support the state court’s conclusion that Petitioner was ineligible for resentencing.
23 *See generally* ECF No. 1.

24 Liberally construed, the petition states a cognizable claim for federal habeas relief, *see In*
25 *re Winship*, 397 U.S. 358, 364 (1970) (criminal defendant may be convicted only upon proof
26 beyond reasonable doubt of every fact necessary to constitute crime with which he is charged), and
27 merits an answer from Respondent, *see Zichko v. Idaho*, 247 F.3d 1015, 1020 (9th Cir. 2001)
28 (federal courts must construe *pro se* petitions for writs of habeas corpus liberally). Although

1 resentencing under Section 1172.6 is a state remedy, the denial of a Section 1172.6 resentencing
2 petition could potentially give rise to a due process claim if relief were warranted under the statute
3 but denied, i.e., if the evidence were no longer sufficient to support a conviction of murder or
4 attempted murder because of the changes to Cal. Penal Code § 188 or § 189, made effective
5 January 1, 2019. *See, e.g., People v. Torres*, 46 Cal. App. 5th 1168, 1180 (Cal. Ct. App. 2020) (in
6 discussing defendant's resentencing request pursuant to then Section 1170.95, stating that "[t]here
7 is . . . a possibility that Torres was punished for conduct that is not prohibited by section 190.2 as
8 currently understood, in violation of Torres's constitutional right to due process . . . because it
9 would be unjust for a court to permit a court to deny a petitioner relief on the basis of facts that the
10 jury did not necessarily find true, and which may not be sufficiently supported by the record.").

CONCLUSION

12 For the foregoing reasons, the Court orders as follows.

13 1. The Court GRANTS Petitioner's request to reopen this action. ECF No. 7. The
14 Court ORDERS the Clerk to VACATE the Order of Dismissal and related judgment (ECF Nos. 4,
15 5), and REOPEN the case.

16 2. The Court DENIES as moot Petitioner's request to proceed *in forma pauperis*.
17 ECF No. 6. Petitioner has paid the filing fee. ECF No. 8.

18 3. The Clerk shall serve electronically a copy of this order upon the Respondent and
19 the Respondent's attorney, the Attorney General of the State of California, at the following email
20 address: SFAWTParalegals@doj.ca.gov. The petition and the exhibits thereto are available via
21 the Electronic Case Filing System for the Northern District of California. The Clerk shall serve by
22 mail a copy of this order on Petitioner.

23 4. Respondent shall file with the Court and serve on Petitioner, within **ninety-one**
24 **(91) days** of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules
25 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted
26 based on the claim(s) found cognizable herein. Respondent shall file with the answer and serve on
27 Petitioner a copy of all portions of the state trial record that have been transcribed previously and
28 that are relevant to a determination of the issues presented by the petition.

1 If Petitioner wishes to respond to the answer, he shall do so by filing a traverse with the
2 Court and serving it on Respondent within **thirty-five (35) days** of the date the answer is filed.

3 5. Respondent may file, within **ninety-one (91) days**, a motion to dismiss on
4 procedural grounds in lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of
5 the Rules Governing Section 2254 Cases. If Respondent files such a motion, petitioner shall file
6 with the Court and serve on Respondent an opposition or statement of non-opposition within
7 **twenty-eight (28) days** of the date the motion is filed, and Respondent shall file with the Court
8 and serve on Petitioner a reply within **fourteen (14) days** of the date any opposition is filed.

9 6. Petitioner is reminded that all communications with the Court must be served on
10 Respondent by mailing a true copy of the document to Respondent's counsel. Petitioner must
11 keep the Court informed of any change of address and must comply with the Court's orders in a
12 timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute
13 pursuant to Federal Rule of Civil Procedure 41(b). *See Martinez v. Johnson*, 104 F.3d 769, 772
14 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

15 7. Upon a showing of good cause, requests for a reasonable extension of time will be
16 granted provided they are filed on or before the deadline they seek to extend.

17 This order terminates ECF Nos. 6, 7.

18 **IT IS SO ORDERED.**

19 Dated: May 25, 2023



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21 JON S. TIGAR
22 United States District Judge

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